UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,162	01/18/2002	Jun-ichi Yamato	ND-415US	7609

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ART UNIT	PAPER NUMBER
2623	

MAIL DATE	DELIVERY MODE
01/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)
Advisory Action _Before the Filing of an Appeal Brief_		10/050,162	YAMATO ET AL.
		Examiner	Art Unit	
		David R. O'Steen	2623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>28 December 2006</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

    b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b) ☐ They raise the issue of new matter (see NOTE below);

    (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

    NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: <u>2 and 4</u>.

    Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
    See attached

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

SCOTT E. BELIVEAU
PRIMARY PATENT EXAMINER

Regarding Claim 2, Arsenault discloses a program processing system (20 – figure 1) for performing a program process using an electronic program guide, comprising: a program processing apparatus (64 – figure 3) for executing a program process (Col. 9, lines 29-33). Arsenault teaches, a coomunications network (24 – figure 2; Col. 5, lines 56-61) an electronic program guide preparation server (46 – figure 2) for preparing an electronic program guide (Col. 5, lines 50-55). Arsenault teaches, said electronic program guide preparation server (26 – figure 2) connected to said communication network (24 – figure 2; Col. 5, lines 56-61), determination means for determining a condition of each of the programs based on the data regarding the programs (Col. 16, lines 3-17), electronic program guide preparation means (48 – figure 2) for preparing an electronic program guide of a modified display form wherein a selection section for performing a process in accordance with the condition of each of the programs is displayed (142,144 – figure 7; Col. 5, line 61 – Col. 6, line 4), and transmission means (42 – figure 2) for transmitting the prepared electronic program guide to said program processing apparatus (Col. 6, lines 24-30). Arsenault discloses the broadcaster (26 – figure 2) may determine from the received programming information, that a specific premium movie that is scheduled should be recorded into cache memory 92 without the viewer's prior request in order to allow a viewer to choose when to watch the premium movie (Col. 16, lines 9-17). A broadcaster can provide an indicator [144] to indicate to the user that the broadcaster determined this program should be recorded to cache memory 92 as shown in figure 7. Further, database 48 or "electronic program guide preparation means" prepares a program guide that is formatted with display indicators 142/144 that notify the user of recordings that have been scheduled by the viewer [142] and of recordings that have been scheduled by the broadcaster [144] as shown in figure 7. The indicators 142 and 144 displayed in cells 104 and 141 as disclosed by Arsenault reads on "a selection section for performing a process in accordance with the condition of each of the programs is displayed". Arsenault teaches, program processing apparatus (64 – figure 3) including electronic program guide displaying means (74 – figure 3) for displaying the electronic program guide received through said communication network (Col. 10, line 44 – Col. 11, line 9) and program processing means (80 – figure 3) operable in response to selection of one of the selection sections displayed on the electronic program guide for executing a program process corresponding to the selected selection section (Col. 12, lines 54-57). Arsenault discloses CPU 74 uses the received and stored program guide data in memory 78 to prepare for display the program guide on television 66. Further, Arsenault discloses logic 80 receives user selections and commands from remote control 86 and forwards the commands to CPU 74 so the commands can be executed. So, a viewer can use remote control 86 to select a cached program for viewing by selecting one of the cells 141 on cache channels 140 as shown in figure 7. Logic 80 in response to the selection of one of cell 141 or "selected section" will forward the selection data to CPU 74. Next, CPU 74 will locate the MPEG data file in additional cache memory 92 containing the selected program and output the program to D/A converter 72 in order for the analog signal to be displayed on television 66 (Col. 17, lines 4-18). Arsenault fails to disclose, wherein said electronic program guide preparation server determines whether or not an electronic program guide should be distributed to said program processing apparatus based on a privacy level of information sent thereto from said program processing apparatus.

In an analogous art, Ellis teaches, the electronic program guide preparation server (25 – figure 2c) determines whether or not an electronic program guide should be distributed to said program processing apparatus (23 – figure 2c) based on a privacy level of information sent thereto from said program processing apparatus (Col. 18, lines 32-61). Ellis discloses a user may indicate a desire to set parental controls or "privacy level" for programs and channels that are displayed in the program guide and these settings will be stored on storage device 56 of program guide server 25 (Col. 6, lines 13-17). Programs and channels that match the user's defined parental controls will be locked and the information will not be made available.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Arsenault with the teachings of Ellis in order to facilitate the electronic program guide preparation server determines whether or not an electronic program guide should be distributed to said program processing apparatus based on a privacy level for the benefit of locking programs to prevent unauthorized viewers from watching programs that they are not authorized to view.

As for Claim 4, Arsenault fails to disclose wherein a consideration which differs depending upon a privacy level of information sent from said program processing apparatus is imposed for distribution of an electronic program guide from said electronic program guide preparation server to said program processing apparatus.

In an analogous art, Ellis teaches wherein a consideration which differs depending upon a privacy level of information sent from said program processing apparatus (23 – figure 2c) is imposed for distribution of an electronic program guide from said electronic program guide preparation server (25 – figure 2c) to said program processing apparatus (Col. 18, lines 32-61). Ellis discloses a user may indicate a desire to set parental controls (2100 – figure 23) or "privacy level" for programs and channels that are displayed in the program guide and these settings will be provided to the server (2210 – figure 23) and stored on storage device 56 of program guide server 25 (Col. 6, lines 13-17). Programs and channels that match the user's defined parental controls (2250 – figure 23) will be locked and the information will not be made available.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Arsenault with the teachings of Ellis in order for a consideration which differs depending upon a privacy level of information sent from said program processing apparatus is imposed for distribution of an electronic program guide from said electronic program guide preparation server to said program processing apparatus for the benefit of locking programs to prevent unauthorized viewers from watching programs that they are not authorized to view.

Moreover, the Remarks made by the applicant do not place the application in the condition for allowance. In the Remarks filed by the applicant on December 28, 2006, the applicant traverses the rejection of Claim 2 as it appears i nthe Final Rejection mailed October 5,2006. After describing the applicant's invention, specifically the transmission of privacy level data from the user apparatus to the program guide server for the purposes of tailoring the program guide, on pages 4 and 5 of the Remarks, the applicant states that . Arsenault, relied on in the U.S.C 103 rejection of Claim 2, is silent on this limitation of Claim 2. Moreover, the applicant states that Ellis also does teach or suggest this limitation. In view of the two points, the applicant believes that the rejection should be withdrawn. Unfortnately, the examiner disagrees. While the examiner agrees that Arsenault does not disclose the limitation of Claim 2, he also wishes to point out the Arsenault was never relied upon to teach or suggest this limitation. Ellis, on the other hand does teach this limitation (see Ellis, col. 18, lines 32-61). Ellis allows the user to   send information to the program guide server for the purposes of

tailoring the program guide to be received to their wishes. Please see the pages 3 through 4 and 10 through 13 of the Office Action mailed October 5, 2006, for a more detailed explanation. In view of these points, the examiner reaffirms that the combination of Arsenault and Ellis meets the broadest reasonable interpretations of the limitations comprising Claim 2 and, therefore, maintains the maintains the rejection .